



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 26, 1998

Mr. Robert A. Schulman
Schulman, Walheim & Heidelberg
112 East Pecan, Suite 3000
San Antonio, Texas 78205-1528

OR98-2490

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118885.

The United Independent School District (the "district"), which you represent, received an open records request from a principal of one of the district's schools for certain records pertaining to allegations of sexual harassment. You state that you have released to the requestor two pages that comprise an "Employee Grievance Form: Level One," which you have designated as Exhibit B. You seek to withhold, however, twelve pages of handwritten notes, designated Exhibit C, because you contend these documents are not subject to the provisions of the Open Records Act. In the alternative, you contend these documents are excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy.¹

We first address whether the records at issue are subject to the Open Records Act. Section 552.002(a) of the Government Code defines the meaning of "public information" for purposes of the act:

In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

¹This ruling does not address any due process right the requestor may have to this information.

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

You contend that the documents at issue are not subject to the act because

these papers show, on their face, that they were not maintained in connection with the transaction of official District business. In this regard, they were not prepared as part of the teacher's official duties and were not used for teaching or to conduct official District business.

Regardless of the reason for which these documents may have been originally created, it is apparent to this office that the district now possesses these records and will likely at least consider their content during the employee grievance proceedings. Consequently, these records have been "collected, assembled, or maintained [by the district] . . . in connection with the transaction of official business." We, therefore, conclude that these records are subject to the Open Records Act and may be withheld from the requestor only if they come within one of the act's exceptions to required public disclosure.

We now address your arguments under section 552.101 of the Government Code. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation.

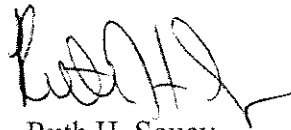
The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment were exactly the kinds of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation*. *Ellen*, *supra*, at 525. However, the court ordered the release of the affidavit of the person under investigation, in part because it ruled that he had waived any privacy interest he may have had in the information by publishing a detailed letter explaining his actions and state of mind at the time of his forced resignation. *Id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from

the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance "the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements." *Id.*

In this instance, however, the requestor is asking only for the "attachments" to the employee grievance form filed with the district. After reviewing the records at issue, we have determined that the first page of Exhibit C is in fact a continuation of the outline of complaints in Exhibit B filed by the teacher. The remaining documents in Exhibit C constitute a "diary" detailing the events giving rise to each of the individual complaints. We therefore conclude that, consistent with the court's holding in *Ellen*, that the first page of Exhibit C must be released to the requestor because this document serves as part of the "summary" of the sexual harassment allegations. The remaining documents, on the other hand, are more similar to the "witness statements" that the court determined were excepted from public disclosure on privacy grounds. The district therefore must withhold the remaining eleven pages of handwritten notes pursuant to section 552.101 in conjunction with common-law privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 118885

Enclosures: Submitted documents